UNITED
NATIONS

AT

Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 637

Case No. 694: CHHATWAL

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Jerome Ackerman, First Vice-President, presiding; Mr. Luis de Posadas Montero, Second Vice-President; Mr. Mikuin Leliel Balanda;

Whereas, on 1 September 1992, Tarvinder Singh Chhatwal, a former staff member of the United Nations Children's Fund, hereinafter referred to as UNICEF, filed an application requesting the Tribunal, inter alia:

"...

11.

(a) To find that the separation/termination order served upon the Applicant ... dated 4 February 1992 (...) is not legally valid...

...

(g) To find that the local UNICEF Management has failed to give appropriate notice of termination/ separation...

(h) To find that the local UNICEF Management was wrong in holding that the service of the Applicant was unsatisfactory...

...

(i) To find that the allegation of 'medically unfit' is patently wrong...

(j) To find that one superior colleague ... had ... been indulging in ... unfair and unjust but systematic complaints against the Applicant...

(k) To find that the Applicant was mentally tortured and harassed, humiliated etc. by UNICEF Management..."

Whereas the Respondent filed his answer on 7 December 1992;

Whereas, on 6 April 1994, the President of the Tribunal, pursuant to article 10 of the Rules of the Tribunal, put a question to the Respondent, to which he provided an answer on 15 April 1994;

Whereas the Applicant filed written observations on 20 June 1994;

Whereas, on 28 June 1994, the presiding member of the panel ruled that no oral proceedings would be held in the case;

Whereas the facts in the case are as follows:

The Applicant was initially hired by UNICEF in March 1971, on a series of Special Service Agreements as a Clerk/Typist, in the sub-office in Bombay, India. On 1 January 1974, he received a three-month fixed-term appointment as a Parts Clerk at the ND-3, step II level. His appointment was extended for further fixed term periods of varying duration, until 31 May 1990, the expiration date of his last fixed-term appointment.

During the course of his employment with UNICEF, he received successive promotions to the ND-4, step II level, with effect from 1 January 1981, and to the ND-6 level, with effect from 1 August 1984.

The Applicant's last extension was for the duration of one year, from 1 June 1989 until 31 May 1990. According to the record, when the Administration was considering this extension, the Applicant was advised that there would be "quarterly reports on

[the Applicant's] conduct ... and performance" during the term of the extension. In addition, the UN Medical Director reviewed the Applicant's medical records and classified him as 2A (candidates who have a correctible medical impairment and are only eligible for employment after this has been corrected or candidates who have had a serious medical problem and who cannot be cleared yet for employment). The Applicant was advised to obtain counseling and medical treatment, otherwise the Office of Personnel Services would "not be in a position to extend [the Applicant's] contract on a 2A classification."

On 28 March 1990, the local Appointment and Placement Committee (APC) met to consider the Applicant's contractual situation. It noted that the Applicant's performance had deteriorated and that his supervisors had recommended that his fixed-term appointment should not be extended beyond its expiration date of 31 May 1990. There was, however, no agreement among the five members of the APC as to the final recommendation. Three members suggested that, on humanitarian grounds and because of his initial good performance, the Applicant should be considered for a lateral transfer on a fixed-term appointment of one year, so that his performance could be monitored in a different work situation. Two members of the Committee recommended that the Applicant's contract should not be extended as he had already been given ample opportunity to improve his performance. The UNICEF Representative in the India Country Office (ICO), decided not to extend the Applicant's fixed-term appointment.

On 5 April 1990, the Personnel Officer at the ICO informed the Applicant of the decision not to renew his fixed-term appointment upon its expiration date, on 31 May 1990.

On 6 April 1990, the Applicant filed a complaint with the Ombudsperson at UNICEF/ICO, alleging that the decision to let his fixed-term appointment expire was due to false allegations and charges made against him by his supervisor. In his report to the Director of UNICEF/ICO, submitted on 22 May 1990, the Ombudsperson concluded as follows:

"The case was found very complicated and it was difficult to find fault and conclusive evidence to decide who was at fault - the staff member, supervisors or other Managers. Surely, members of the APC might have faced the same dilemma.

However, considering the very long years of service of the staff member, and keeping in view the interest and good image of the Organization, the Director, ICO, may use her discretion, in good faith, to give one more chance to the staff member.".

On 16 May 1990, the Applicant requested the Executive Director of UNICEF to review the administrative decision not to extend his fixed-term appointment beyond 31 May 1990.

On 26 July 1990, the Director of Personnel at Headquarters informed the Applicant that, as he was sick at the time of his separation from service, a substantive reply to his request for review would be given when the medical evaluation of his case had been completed.

On 21 September 1990, the Applicant was informed by the Division of Personnel at Headquarters that, after reviewing his medical condition, the UN Medical Director had decided that the Applicant should continue on sick leave. The Applicant was accordingly reinstated, on sick leave, on full pay, until further notice from the Medical Director. On 1 October 1990, the Applicant was informed that he would be reinstated, with effect from 1 June 1990.

On 9 November 1990, the Personnel Officer informed the Applicant that the Administration had forwarded to the Secretary of the Pension Board a recommendation to award him a disability benefit in accordance with article 33 of the Regulations and Rules of the United Nations Joint Staff Pension Fund. In the interim, he was being placed on sick-leave, with half-pay, with effect from 26 October 1990, as he had exhausted his entitlement to sick leave on full pay.

On 6 March 1991, the Applicant wrote to the Executive Director of UNICEF alleging "biased action, mental torture and harassment" on the part of his supervisor.

On 13 June 1991, the Deputy Executive Director wrote to the Applicant as follows:

> "Based on all the factors outlined above, we consider that the UNICEF Representative, ICO, properly exercised her authority, in strict accordance with due process, to allow your fixed-term appointment to expire as of c.o.b. [close of business] 31 May 1990. You had been told as early as 1988, that you must improve your performance if you wanted to remain in UNICEF. The Organization gave you numerous opportunities as well as time to improve, however you failed to do so. Additionally, it is well documented that you had problems not only with your immediate supervisor, but with your second reporting officer as well as your previous supervisors and other office staff who had written to complain about you. Therefore, we maintain that the non-renewal of your fixed-term appointment for unsatisfactory performance stands. We further do not consider that the documentation presented reflects that your last supervisor, [...], behaved in a prejudicial manner towards you. We further consider your unsubstantiated allegations against [your supervisor] in connection with his dealings with outside suppliers to reflect poorly on your judgement."

On 24 July 1991, the Executive Director of UNICEF wrote to the Applicant and confirmed the decision conveyed by his Deputy in her letter of 13 June 1991. On 23 August 1991, the Applicant lodged an appeal with the Joint Appeals Board (JAB) against the decision not to extend his fixed-term appointment.

On 25 November 1991, the Applicant was informed by the Secretary of the United Nations Joint Staff Pension Board as follows:

> "...the United Nations Staff Pension Committee has determined that you are incapacitated for further service and consequently entitled to a disability benefit under article 33 of the Regulations of the Fund... The payment of your benefit will take effect on the date following that on which you cease to be entitled to salary and emoluments from the United Nations."

On 4 February 1992, the Chief, Personnel Services, informed the Applicant that he would be eligible to receive a disability benefit from the United Nations Joint Staff Pension Fund with effect from 1 February 1992, and that it had been therefore decided to separate him from the Organization with effect from 31 January 1992, from which date the Applicant would cease to receive salary and allowances from UNICEF.

On 23 August 1991, the Applicant lodged an appeal with the Joint Appeals Board (JAB). The JAB adopted its report on 6 May 1992. Its considerations and recommendations read, in part, as follows:

"Considerations and recommendations

...

17. The Panel, ..., expressed some concern at the absence of documentation supporting the Administration's contention that Appellant's behaviour had given rise to letters of complaint from his colleagues and supervisors other than [the Officer-in-Charge, Logistics Unit, Bombay]. In this connection, the question was raised whether the beginning of his difficulties with other staff coincided with his complaint alleging overpayments by UNICEF for material acquired, as a result of the actions of staff responsible for its purchase who did not challenge overpricing by the companies supplying it.

18. In the absence of any conclusive indications, such as the outcome of disciplinary proceedings, if they had been held, the Panel found itself unable to determine whether the discontinuance of Appellant's employment would have been justified on grounds of unsatisfactory conduct and performance.

19. The Panel took note, however, of the fact that as the separation of Appellant from service was the consequence of his having been awarded a disability benefit by the UNSPC [United Nations Staff Pension Committee], his separation was due to health grounds, rendering academic the question of the adequacy of alternative grounds for discontinuance of his service.

20. As to the justification for the award of a disability benefit to the Appellant, the Panel noted that it neither had the necessary information nor the required competence to deal with the medical aspects of the award. But it wishes to draw attention to the fact that the procedures laid down in the administrative rules of the UNJSPF [United Nations Joint Staff Pension Fund] for challenging the award of a disability benefit, including the setting up of a Medical Board to deal with its medical aspects, have not yet been exhausted by the Appellant.

21. The Panel, therefore, unanimously recommends that if these procedures should be invoked by the Appellant, any time-limits which might have been exceeded by then, should be waived by the Committee considering this appeal."

On 10 June 1992, the Under-Secretary-General for Administration and Management transmitted to the Applicant a copy of the JAB report and informed him as follows:

"The Secretary-General has re-examined your case in the light of the Board's report. Taking into consideration all the circumstances of your case, and particularly the serious deterioration of your performance under several supervisors prior to the decision not to renew your fixed-term appointment, the Secretary-General finds that such decision was fully justified.

He has taken note that the original decision not to extend your appointment was superseded by the decision to maintain you in service while your medical condition was being evaluated, and by the subsequent decision to terminate your appointment for health reasons on 31 January 1992, one day before you became eligible to receive the disability benefit which had been awarded to you by the United Nations Staff Pension Committee in November 1991.

The Secretary-General agrees with the Board's conclusion that, if you so wish, you should be allowed to challenge the basis on which a disability benefit was awarded to you. Bearing in mind, however, that he has no decision-making authority under the Regulations and Rules of the United Nations Joint Staff Pension Fund, he cannot endorse the Board's recommendation that the United Nations Staff Pension Committee should waive the normal time-limits in the event you decide to ask that Committee to reconsider the award of a disability benefit to you.

Since the termination of your appointment for reasons of health was based on the Medical Director's determination that you were incapacitated for further service, the Secretary-General has decided that a request on your part to have that determination reviewed by a Medical Board would be entertained, even though it would be outside the normal time-limits, provided it is received by the Medical Director in New York within two months of the date of this letter.

The Secretary-General wishes to draw your attention to the fact that, in the event a Medical Board were to reverse the Medical Director's determination, the only result would be that you would no longer be eligible to receive the disability benefit which has been awarded to you. It would not mean that you would return to service with UNICEF. The only reason for not separating you from service upon the expiry of your fixed-term appointment was to allow for a determination of your medical condition and to permit you to receive a disability benefit. Should the determination that you were incapacitated for further service be reversed, the prior decision not to extend your appointment would be given full force and effect. In other words, given your prior unsatisfactory service, UNICEF would not grant you a further appointment."

On 1 September 1992, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The decision by the Respondent not to extend the Applicant's fixed-term appointment on medical grounds was in violation of the provisions of the UNICEF Personnel Administration Manual on the termination of appointments.

2. The termination of the Applicant's appointment also violated United Nations staff regulation 9.1(a).

3. The Applicant was exposed to "extreme mental torture and humiliation" to which the management of UNICEF/ICO was indifferent.

Whereas the Respondent's principal contentions are:

1. The first decision was to allow the Applicant's fixed-term appointment to expire. Expiration of appointments is not

termination of appointments, within the meaning of regulation 9.1 of the United Nations Staff Regulations and Rules. Procedures for termination of appointments are inapplicable to cases of expiration of fixed-term appointments.

2. The second decision was based on a determination by the UN Medical Service that the Applicant was incapacitated for further service. This decision did not violate his rights.

3. The Applicant's charges of "mental torture and harassment" by his supervisor are unfounded.

The Tribunal, having deliberated from 23 June to 8 July 1994, now pronounces the following judgement:

I. The Applicant appeals from a decision dated 10 June 1992, by the Secretary-General. That decision adopted a recommendation by the Joint Appeals Board (JAB) for waiver of time limits should the Applicant wish to request a Medical Board in order to challenge the termination of his appointment for reasons of health. Originally, there had been a decision not to extend the Applicant's appointment for reasons which included a "serious deterioration" of the Applicant's performance "under several supervisors." However, that was superseded by a decision to retain the Applicant while his medical condition was being evaluated. Following the evaluation, the Applicant's appointment was terminated for health reasons on 31 January 1992. He thereupon became eligible to receive the disability benefit awarded to him by the United Nations Staff Pension Committee as of 1 February 1992.

II. The Applicant did not avail himself of the opportunity to request a Medical Board for review of the health reasons for which his appointment had been terminated and his disability benefit had been awarded. Instead, he has been receiving the disability benefit from the United Nations Joint Staff Pension Fund since 1 February 1992.

III. The Applicant's original claim considered by the JAB was for compensation in the amount of $10 million for extreme mental torture, harassment, etc., by his supervisors and by others of the India Country Office of UNICEF. The JAB found itself unable, on the basis of the evidence before it, to determine the validity of the Applicant's claim that, because there had been no deterioration in the quality of his performance and conduct and because he was perfectly fit to continue in service, his fixed-term appointment should have been renewed on its expiration on 31 May 1990. Nor did it deem itself competent or in possession of the necessary information to deal with the question of whether, for reasons of health, the Applicant was no longer able to perform his duties. The JAB considered that, as the Applicant had been separated for reasons of health, the question of the adequacy of alternate grounds for discontinuance of his service had become academic.

IV. The Tribunal agrees with the JAB's analysis. There is no reason for the Tribunal to examine the decision to allow the Applicant's fixed-term appointment to expire since that decision was not implemented. In the meantime, the Applicant continued to receive his salary and was on sick leave, in accordance with the applicable provisions of UNICEF's Personnel Administration Manual, until his termination for medical reasons. The Applicant has not challenged his termination for medical reasons. He has not requested a Medical Board. Hence, there is no ground for further examination of that decision by the Tribunal. Nor is there any merit to the Applicant's contention that his termination violated staff regulation 9.1(a) since that regulation is inapplicable to staff members holding fixed-term appointments. Similarly, there is no basis for a finding that the Applicant's charges of mental torture and harassment by his supervisors were established. Those charges were investigated by an Ombudsperson, who was unable to

determine whether they were meritorious, or to decide who was at fault. Mainly because of the Applicant's length of service, he recommended that, as a discretionary matter, the Applicant be given another chance.

V. For the foregoing reasons, the application is rejected.

(Signatures)

Jerome ACKERMAN
First Vice-President, presiding

Luis de POSADAS MONTERO
Second Vice-President

Mikuin Leliel BALANDA
Member

Geneva, 8 July 1994

R. María VICIEN-MILBURN
Executive Secretary